

same manner as a transcribed deposition. The videotape, if admitted in evidence, will be played during the hearing and transcribed into the record by the reporter.

(g) The Administrative Law Judge rules on the admissibility of the deposition or any part thereof and on any objections.

#### **§ 5.555 Treatises.**

(a) Treatises, periodicals, or pamphlets relating to nautical practices are admissible in evidence without the use of expert witnesses.

(b) The Administrative Law Judge evaluates such materials based on the facts and circumstances of the case. The materials may not be considered conclusive of an issue.

#### **§ 5.557 Medical examination of respondent.**

(a) In a hearing in which the physical or mental condition of the respondent is in controversy, the Administrative Law Judge may order the respondent to submit to a medical examination.

(b) An examination ordered by an Administrative Law Judge will be conducted at government expense by a physician designated by the Administrative Law Judge.

(c) If the respondent fails, or refuses, to submit to an ordered examination such failure is accorded due weight in determining the facts alleged in the specifications.

#### **§ 5.559 Argument.**

After all the evidence has been presented, the investigating officer and the respondent may present oral or written argument.

#### **§ 5.561 Submission of proposed findings and conclusions.**

The Administrative Law Judge affords the investigating officer and the respondent reasonable opportunity to submit proposed findings and conclusions with supporting reasons. If either desires to submit such matter, the Administrative Law Judge fixes the time within which it shall be filed. Failure to comply within the time fixed by the Administrative Law Judge shall be regarded as a waiver of the right.

#### **§ 5.563 Administrative Law Judge's findings and conclusions.**

(a) The Administrative Law Judge renders ultimate findings and conclusions.

(b) A separate conclusion is made by the Administrative Law Judge on each charge and specification. A specification may be found *not proved*, *proved in part*, or *proved*. A charge may be found *not proved* or *proved*.

(c) The testimony and exhibits presented, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of the Administrative Law Judge's findings and conclusions.

#### **§ 5.565 Submission of prior record and evidence in aggravation or mitigation.**

(a) Except as provided in § 5.547 and § 5.549, the prior record of the respondent may not be disclosed to the Administrative Law Judge until after conclusions have been made as to each charge and specification, and then only if at least one charge has been found proved. The prior record must include only information concerning the respondent and is limited to the following items less than 10 years old:

(1) Written warnings issued by Coast Guard investigating officers and accepted by the respondent;

(2) Final agency action on Coast Guard suspension and revocation hearings wherein one or more charges was found proved;

(3) Voluntary surrender agreements entered into by the respondent;

(4) Any final judgments of conviction in State or Federal courts;

(5) Final agency action resulting in civil penalties or warnings being imposed against the respondent in proceedings administered by the Coast Guard under 33 CFR 1.07; and,

(6) Any official commendatory information concerning the respondent of which the investigating officer is aware.

(b) The investigating officer may offer evidence and argument in aggravation of the charge or charges found proved.

(c) The respondent is allowed to comment on or offer evidence regarding prior maritime service including the

prior record introduced by the investigating officer and any commendatory information.

(d) The respondent may offer evidence and argument in mitigation of the charge or charges found proved.

(e) The investigating officer may offer evidence and argument in rebuttal of the evidence and argument introduced by the respondent in mitigation.

#### § 5.567 Order.

(a) The Administrative Law Judge enters an order which recites the disposition of the case. When a charge has been found *not proved*, the order will state the charge is *dismissed* with or without prejudice. When a charge is found *proved*, the Administrative Law Judge may order an *admonition*, *suspension* with or without probation, or *revocation*.

(b) The order is directed against all licenses, certificates or documents, except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents. If the Administrative Law Judge determines that the respondent is professionally incompetent in the grade of the license, certificate or document held, but is considered competent in a lower grade, the license, certificate or document may be revoked and the issuance of one of a lower grade ordered.

(c) An order must specify whether the license, certificate or document affected is:

- (1) Revoked;
- (2) Suspended outright for a specified period after surrender;
- (3) Suspended for a specified period, but placed on probation for a specific period; or
- (4) Suspended outright for a specified period, followed by a specified period of suspension on probation.

(d) The order will normally state, *that the license, certificate or document is to be surrendered to the Coast Guard immediately*, if the order is one of revocation or includes a period of outright suspension. In cases involving special circumstances, the order may provide for surrender on a certain date.

(e) The time of any period of outright suspension ordered does not commence until the license, certificate or docu-

ment is surrendered to the Coast Guard. The time of any period of suspension on probation begins at the end of any period of outright suspension or the effective date of the order if there is no outright suspension.

#### § 5.569 Selection of an appropriate order.

(a) This section addresses orders in a general manner. The selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence.

(b) Except for acts or offenses for which revocation is mandatory, factors which may affect the order include:

(1) Remedial actions which have been undertaken independently by the respondent;

(2) Prior record of the respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and

(3) Evidence of mitigation or aggravation.

(c) After an order of revocation is entered, the respondent will be given an opportunity to present relevant material on the record for subsequent consideration by the special board convened in the event an application is filed in accordance with subpart L of this part.

(d) Table 5.569 is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial adjudication of each case on its individual facts and merits. The orders are expressed by a range, in months of outright suspension, considered appropriate for the particular act or offense prior to considering matters in mitigation or aggravation. For instance, without considering other factors, a period of two to four months outright suspension is considered appropriate for *failure to obey a master's written instructions*. An order within the range would not be considered excessive. Mitigating or aggravating factors may